IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 626 of 2007(Y)

PETITIONER:

N.S. HARI NARAYANAN,
ASSISTANT EXECUTIVE ENGINEER, M.VIP DIVISION NO.IV
PIRAVOM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:
----

1. SECRETARY,
VIGILANCE (D) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. SECRETARY,
WATER RESOURCES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

3. CHIEF ENGINEER,
IRRIGATION AND ADMINISTRATION,THIRUVANANTHAPURAM.

4. CONVENER,
DEPARTMENTAL PROMOTION COMMITTEE, WATER RESOURCES DEPARTMENT AND CHIEF ENGINEER, IRRIGATION AND ADMINISTRATION, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI.BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

==========

WP(C).No.626 OF 2007-Y.

==========

Dated this the 18th day of January, 2007.

J U D G M E N T

The petitioner is an Assistant Executive Engineer in the Irrigation Department. His contentions are; i) Vague and belated charges have been framed directing him to face disciplinary proceedings before the Vigilance Tribunal and therefore, Ext.P7 memo of charges and Ext.P10 order referring the case for detailed enquiry by the Vigilance Tribunal are liable to be set aside; ii) Pendency of disciplinary proceedings cannot stand in the way of considering the petitioner's case by the Departmental Promotion Committee for promotion to the post of Executive Engineer

2. Counsel for the petitioner, during the course of his arguments, submits that the contentions urged against Exts.P7 and P10 orders need not be gone into by this Court, because, the petitioner would prefer to raise those contentions before the appropriate forum at the appropriate stage of the disciplinary proceedings. Having regard to the above submissions, I am inclined to say, let the needful be done by the petitioner, as permitted by law.

3. Ext.P7 memo of charges have been framed against the petitioner directing him to show cause why disciplinary

proceedings should not be initiated. Government, having not satisfied with the explanation submitted by him, has referred the matter for detailed enquiry by the Vigilance Tribunal. A perusal of Ext.P7 shows that what is in contemplation is the imposition of one of the major penalties under Rule 11(1) of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960. The mere fact that the petitioner is facing disciplinary proceedings need not stand in the way of his case being considered by the Departmental Promotion Committee for selection to the post of Executive Engineer. Note (i) sub Rule 7 of Rule 28(b)(i) of K.S. & S.S.R. specifically provides that, Officers under suspension and Officers against whom departmental proceedings are pending for the imposition of a major penalty under the disciplinary rules applicable to them should not be included in the select list. But the suitability of such an Officer for promotion should be assessed at the relevant time by the Departmental Promotion Committee and a finding reached whether, if the Officer had not been suspended or the departmental proceedings had not been pending against him, he would have been recommended/selected for promotion. The above rule further says that, where a select list is prepared, the Departmental Promotion Committee shall also make a finding

as to what the position of the Officer in that list would have been, but for the suspension or departmental proceedings against him. The finding as to the suitability and his probable place in the select list shall be recorded separately and attached to the proceedings. The proceedings of the Departmental Promotion Committee need only contain a note to the effect that the findings are recorded in the attached sheet of paper. The rule further provides that officers against whom vigilance or departmental proceedings are taken after the charges have prima facie been established in a preliminary enquiry should not be included in the Select List but, the cases of such Officers should also be assessed. The question of including them in the select list shall be considered when the result of the enquiry is known.

4. The above provision gives clear guidance to the members of the Departmental Promotion Committee about the method and the procedure to be followed. Hence, the learned counsel for the petitioner is justified in contending that merely because the respondents have issued Ext.P7 charge memo or Ext.P10 order referring the matter to the Vigilance Tribunal, the Departmental Promotion Committee shall not refuse to consider the case of the petitioner or assess his suitability for the post of

Executive Engineer. After due assessment, the procedure prescribed in the relevant Rules shall be followed by the competent authorities.

5. In the light of the discussions made above, the question of granting reliefs (1) and (2) does not arise. There shall be an order directing the 4th respondent to assess the fitness of the petitioner for selection to the post of Executive Engineer in the next meeting of the Departmental Promotion Committee, and to take follow up action as enjoined in Rules 28(b)(i) of K.S.S & S.S.R.

With the above directions, this writ petition is disposed of.

K.K.DENESAN, JUDGE.

kvs/-